



US Army Corps
of Engineers
Alaska District

Public Notice

Proposed Order to Assess An Administrative Penalty

Regulatory Branch (1145b)
Post Office Box 6898
Elmendorf AFB, Alaska 99506-6898

PUBLIC NOTICE DATE: February 26, 2004

EXPIRATION DATE: March 29, 2004

REFERENCE NUMBER: V-1995-0190

WATERWAY NUMBER: Koyukuk River 46

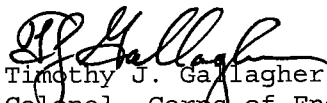
The District Engineer, Alaska District, proposes to issue an order assessing a Class I Administrative Penalty against the Alaska Department of Transportation & Public Facilities for violations of a permit granted under Section 404 of the Clean Water Act.

The purpose of this notice is to solicit comments from the public concerning the proposed penalty order. The proposed order is attached to this Notice and describes the permit violation. Additional information concerning the Class I Administrative Penalty process is contained below.

1. AUTHORITY FOR PROCEEDING: This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. Section 1319(g) and 33 CFR Part 326.6. Following discovery, investigation, and the decision to seek an administrative penalty for a violation of a permit, notice is given to the permittee, the state, and the public.
2. PENALTY PROPOSED: The amount of the penalty proposed in this case is \$25,000. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The penalty amount the District Engineer is authorized to assess as a Class I Penalty is \$10,000 per violation and not more than \$25,000 total.
3. PUBLIC COMMENT AND REQUEST FOR HEARING: The permittee, the appropriate state agency, and the public may file written comments within 30 days from the date of this Notice (see paragraph 6, below for the address for submission of comments). The District Engineer will include all written comments in the administrative record relating to the proposed order. Any person who comments on a proposed order will be given notice of any hearing held on the proposed order. Such persons will have a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is requested by the permittee, any person who has submitted comments on the proposed order will be given notice by the District Engineer of any final order issued, and will be given 30 days in which to petition the District Engineer to set aside the order and to provide a

hearing on the penalty. The District Engineer will set aside the order and provide a hearing in accordance with 33 CFR 326.6 if the evidence presented by the person commenting in support of their petition for a hearing is material and was not considered when the order was issued.

4. PUBLIC HEARING: The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request by the permittee for a hearing should be directed to the District Engineer within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The permittee has a right to present evidence at the hearing, however, he may not challenge the permit condition(s) or limitation(s) which are the subject matter of this order.
5. FINAL DECISION: If the permittee does not request a hearing, the District Engineer may issue the Final Order on this violation on or after 30 calendar days following receipt of this formal notice by the permittee. Any final order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the U.S. District Court is taken under 33 U.S.C. Section 1319(g) (8).
6. AVAILABILITY OF THE ADMINISTRATIVE RECORD: The administrative record relating to the proposed order in this case is available for inspection by the public at the Alaska District Office. It is requested that you contact Ms. Terry Carpenter at (907) 753-2712, to arrange an appointment. All information submitted by the permittee and persons commenting on the proposed order is available as part of the administrative record subject to provisions of law restricting the public disclosure of confidential information.
7. INQUIRIES: Written comments on the proposed penalty must be submitted within 30 days from the date of this notice to the District Engineer at the above address. Any questions concerning this matter may be directed to Ms. Carpenter at the above address, by telephone at (907) 753-2712, or toll free in Alaska at (800) 478-2712.


Timothy J. Gallagher
Colonel, Corps of Engineers
District Engineer

Attachments

Permit No. N-1995-0190

PROPOSED ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. 1319(g) and 33 CFR 326.6, I, Timothy J. Gallagher, Colonel, District Engineer, Alaska District, propose to issue this Order assessing a Class I Administrative Penalty for violation of the above-referenced permit.

Name and Address of Permittee: Alaska Department of Transportation
& Public Facilities
2301 Peger Road
Fairbanks, AK 99709

Permitted Activity: On September 4, 2001, a Department of the Army permit number N-1995-0190, Koyukuk River 46, was issued in accordance with 33 CFR part 325.8 for construction of an access road and aviation support area, and disposal of waste material, for expansion of a floatplane facility at Bettles, Alaska.

Conditions or Limitations Reportedly Violated: Fill material was placed in wetlands outside of the authorized footprint, wetland vegetation was cleared and damaged outside of the authorized footprint, and no silt fence was installed at the water crossing as required by the permit.

Description of the Violation:

a. At the following six locations, equipment was operated, waste material was deposited, and/or vegetation was cleared outside the project footprint in violation of special condition 2 which states, "All equipment operation will be confined to the project footprint to prevent unnecessary damage to the insulating layer of vegetation that protects the permafrost in adjacent wetlands."

- 1) Clearing of vegetation and debris left on the ground off the west side of the new transient parking area, an area of about 100' x 75'.
- 2) Clearing of vegetation off the north side of the transient parking area, about 35' x 125'.
- 3) Clearing, fill, and trash off the west side of the old parking pad, about 45' x 450'.
- 4) Debris piles pushed out of the road footprint into the trees along the access road, between the old road and the far end of the lease lots, the whole length of the lease lots.
- 5) Cleared and damaged area on the north side of the new access road east of the creek.
- 6) A pile of sandbags left above the creek near the road crossing.

b. No silt fence at the creek crossing as required by special condition 1, which reads in part: "Silt fences shall be installed at water crossings prior to placement of fill, and maintained in effective working order until all disturbed soils and fills are permanently stabilized against erosion."

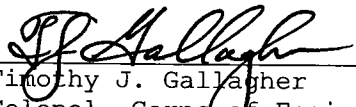
c. Operation of equipment outside the authorized footprint, from the south end of the lease lots to the south waterlane extension, resulting in destruction of vegetation and soil disturbance in a 25' x 65' wetland area and a total disturbance to soils and forest vegetation of approximately 25' x 1,000'.

d. Placement of fill material into a 50' x 250' area of wetlands on the north side of the authorized transient parking area (this overlays the disturbed area described in a.2 above).

The total size of the unauthorized and non-compliant work done in waters of the U.S. is 1.9944 acres.

Based on the foregoing findings, I propose to assess a Class I Administrative Penalty against the permittee, in this case in the amount of \$25,000. This proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount that may be assessed as a Class I Administrative Penalty may not exceed \$25,000.

Issued this 11 day of February 2008.



Timothy J. Gallagher
Colonel, Corps of Engineers
District Engineer